

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JENNIFER R. SCOTT,
Plaintiff,

VS.
MIMEDX GROUP, INC.

Defendant.

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CIVIL ACTION NO. 3:18-CV-01815-S

**PLAINTIFF'S APPENDIX IN SUPPORT OF PLAINTIFF'S BRIEF IN SUPPORT OF
RESPONSE TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER AND MOTION
TO SUPPRESS AUDIO RECORDINGS**

APPENDIX

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Respectfully submitted,

/s/ JASON C.N. SMITH
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CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2019, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court and in accordance with the Federal Rules of Civil Procedure. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means: Harold D. Jones.

/s/ JASON C.N. SMITH
JASON C. N. SMITH

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JENNIFER R. SCOTT,

Plaintiff,

VS.

) NO. 3:18-CV-01815-S

MIMEDX GROUP, INC.

Defendants.

VIDEOTAPED DEPOSITION OF AMY POWERS

Scottsdale, Arizona

August 13, 2019

9:12 a.m.

Prepared by:

SUSAN D. BINGHAM, CR, RPR

Certificate No. 50364

Prepared for:

DISTRICT COURT

(Original)

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1 videographer. The court reporter is Susan Bingham
2 from the firm Veritext. I am not authorized to
3 administer an oath, I am not related to any party
4 in this action nor am I financially interested in
5 the outcome.

6 Counsel and all present in the room and
7 everyone attending remotely will now state their
8 appearances and affiliations for the record. If
9 there any objections to proceeding, please state
10 them at the time of your appearance, beginning
11 with the noticing attorney.

12 MR. SMITH: Jason Smith for the plaintiff,
13 Jennifer Robyn Scott.

14 MR. JONES: Harry Jones with Littler
15 Mendelson for the defendant MiMedx.

16 THE VIDEOGRAPHER: Will the court reporter
17 please swear in the witness.

18 * * *

19 AMY POWERS,
20 called as a witness herein, having been first duly
21 sworn, was examined and testified as follows:

22 THE VIDEOGRAPHER: Thank you. You may
23 proceed.

24 * * *

EXAMINATION

BY MR. SMITH:

Q. Could state your name for the court and jury, please.

A. Amy Powers.

Q. And we're taking your deposition today in Scottsdale, Arizona?

A. Correct.

Q. And you have given an oath to tell the truth as if you were sitting in front of a judge and a jury; correct?

A. Yes.

Q. And you understand that your testimony may be used later at trial if this case goes to trial in Dallas, Texas?

A. Yes.

Q. All right. At one point did you work for the defendant MiMedx?

A. Yes.

Q. And what was your position with MiMedx?

A. I started as an area federal director in the -- in a federal division that was newly created in September of 2014.

Q. Okay. We'll get into some specifics in a minute, but did you overhear a conversation in

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1 going to mark those documents as a group as
2 Exhibit 3.

3 A. Okay.

4 (Deposition Exhibit No. 3 was marked for
5 identification.)

6 Q. BY MR. SMITH: And those include some
7 emails that you sent at MiMedx; correct?

8 A. Correct.

9 Q. They also include a blue document, and can
10 you tell us what that blue document is, if you
11 could hold it up for the video?

12 A. Yes. So this was -- it was a notice in
13 the room from the Ritz-Carlton which is the hotel
14 where MiMedx held the actual sales meeting and --

15 Q. That's the hotel in Florida?

16 A. Yeah, correct, hotel -- the Ritz-Carlton
17 in Florida. And at the time that Kevin Lilly was
18 having this conversation with the people in the
19 room he was with, the one thing that -- you know,
20 I was recording it at the time, but the one thing
21 that really stuck out to me is he said -- and I
22 took a hand note on it, he said, The one person
23 who could fuck up a wet dream, and he was
24 referring -- this was actually about a regional
25 sales director who had just lost her job with the

1 company and her name is Robyn Scott. So I had
2 just taken a handwritten note at the time that
3 that was actually happening because it just, you
4 know, appeared to me to be something that was
5 pretty -- a detrimental thing to say about
6 somebody in a room full of colleagues.

7 Q. And you wrote it on this piece of paper
8 that was in the hotel room?

9 A. Yes, I did.

10 Q. Was this just a random piece of paper that
11 was nearby?

12 A. Yes, it was.

13 Q. And you kept -- you kept that piece of
14 paper?

15 A. Yes, I -- I produced this document as part
16 of my complaint that I gave to MiMedx human
17 resources. So it was part of what I presented.

18 Q. And is this the original document?

19 A. Yes, this is.

20 Q. Okay. And then you also, as a part of
21 Exhibit 3, there's some more emails with MiMedx
22 concerning a complaint you filed regarding the --
23 what I'll call the Kevin Lilly situation?

24 A. Yes.

25 Q. If I refer to the Kevin Lilly situation

1 can we have an understanding that that is the
2 situation in which you and Susan Schardt overheard
3 Kevin Lilly and others at a MiMedx off-site
4 meeting in Florida?

5 A. Yes.

6 Q. And do you believe that Exhibit 3 reflects
7 all the documents that are responsive to Request
8 No. 2?

9 A. Yes.

10 Q. Okay. So you've brought today -- well,
11 you've provided in response to the subpoena
12 Exhibit 2, which is a recording, and Exhibit 3,
13 which are emails you've had with MiMedx regarding
14 the Kevin Lilly situation, and the blue
15 Ritz-Carlton document in which you wrote a note
16 while you were hearing the conversation?

17 A. Yes.

18 Q. All right.

19 Q. What type of business is MiMedx?

20 A. It is a medical device manufacturer and
21 marketer for allograft and -- allograft tissue,
22 basically, used in wound care and used in various
23 other practices, orthopedics and pain management
24 and...

25 Q. What is allograft?

1 reported to?

2 A. Pete Petit.

3 Q. Okay.

4 (Deposition Exhibit No. 5 was marked for
5 identification.)

6 Q. BY MR. SMITH: Now, let me show you what's
7 marked as Exhibit 5 to your deposition.

8 On January 17th, 2017, Chris Cashman
9 issued Exhibit 5, which is -- the subject is
10 Organizational Announcement?

11 A. Yes.

12 Q. Do you recall seeing this?

13 A. I do recall it.

14 Q. And did you learn as a result of the
15 organizational announcement that MiMedx ended the
16 employment of Robyn Scott?

17 A. I didn't know at the time this was put
18 out. It wasn't -- there weren't any names.

19 Q. Okay. Did you find out around January
20 17th, 2017 that Robyn Scott was terminated from
21 MiMedx?

22 A. Yes.

23 Q. Okay. And how did you find that out?

24 A. Talked to Robyn Scott.

25 Q. Okay. And then did you also find out from

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1 been the regional sales director for the north
2 part of Texas?

3 A. Yes.

4 Q. And the western part of Texas?

5 A. Yes.

6 Q. All right. And then you -- then you also
7 talked to Robyn Scott around that time?

8 A. I believe so.

9 Q. And what did she tell you about the
10 termination?

11 A. I don't remember.

12 Q. Was she surprised?

13 A. Yes, very.

14 Q. Were you surprised?

15 A. Yes.

16 Q. Why?

17 A. Because she was a performer. I believe at
18 the time I would have to say she was number two in
19 our division of -- I think there were six of us in
20 our division, six regional sales directors, so I
21 was surprised to hear that she had been let go
22 because her performance was actually higher than
23 mine. So my typical reaction was to think, I
24 could be next if they're letting go somebody who's
25 performing, then...

1 that occurred at the national team meeting, which
2 was me and my colleague Susan Schardt overhearing
3 Kevin Lilly discussing such things as why Robyn
4 Scott was fired from -- or no longer with
5 MiMedx.

6 Q. Okay. And this --

7 A. My complaint -- I guess a complaint.

8 Q. Okay. Would you say Exhibit 6 is the
9 complaint you filed --

10 A. Yes, it is.

11 Q. -- regarding the Kevin Lilly incident?

12 A. Yes, it is.

13 Q. And it indicates that the location was at
14 the MiMedx national team meeting, Orlando,
15 Florida, Ritz-Carlton?

16 A. Yes.

17 Q. So this occurred in Orlando?

18 A. Yes.

19 Q. And do you recall the dates of the MiMedx
20 national team meeting?

21 A. I don't recall -- I know around the
22 time -- I know because of this incident. I can't
23 remember if we were there the 27th, January 27th
24 of 2017.

25 Q. Okay.

1 A. To approximately February 2nd, I
2 believe --

3 Q. Okay.

4 A. -- 2017.

5 Q. And the Kevin Lilly incident occurred on
6 January 30th, 2017?

7 A. Yes.

8 Q. Okay. And what caused you to create
9 Exhibit 6?

10 A. So at the time of -- on January 30th of
11 2017 I was in a room with a colleague, a hotel
12 room -- her hotel room to be exact -- and we heard
13 a loud group of guys coming back from wherever
14 next to us, and they -- it turned out to be the
15 leader -- a lot of the leadership team of MiMedx.
16 And they were immediately just really talking very
17 sexist things about women.

18 Q. Okay.

19 A. And so I made a recording of that and --
20 not to do anything with it, however people found
21 out about it and my superior -- Tim O'Brien and
22 Joe Longo came to me after this meeting and asked
23 me if that had happened, and I said yes, and they
24 told me I needed to file a complaint.

25 So that's when I formulated this email to

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1 go over, you know, exactly kind of step by step
2 what had happened that evening.

3 Q. Okay. So is Exhibit 6 a complaint that
4 Tim O'Brien and Joe Longo asked you to put in
5 writing?

6 A. Actually at the time I put it in writing I
7 was asked to put it in writing by Thornton Kuntz
8 because at this time it had been escalated to
9 human resources.

10 Q. Okay. And did you understand that the
11 MiMedx -- did MiMedx have a sex discrimination and
12 sexual harassment policy?

13 A. Yes.

14 Q. And did -- was it your understanding that
15 the MiMedx policy provided that employees could
16 file complaints about sex discrimination and
17 sexual harassment?

18 A. I don't know the laws behind that.

19 Q. Okay.

20 A. I just know that it was wrong and it
21 was -- I knew it was something that...

22 Q. Okay. And Thornton Kuntz asked you to put
23 it in writing?

24 A. Yes, he did.

25 Q. Okay. So the MiMedx national team meeting

1 was from approximately January 27th to February
2 2nd in Orlando, Florida?

3 A. Correct.

4 Q. And it took place at the Ritz-Carlton?

5 A. Yes.

6 Q. And, generally, what type of activities
7 were occurring at the national team meeting?

8 A. Typically it was -- it's a very, very long
9 day of meetings, so starting at 7:30 -- as early
10 as 7:00, 6:30 in the morning and going until about
11 6:00 at night, different break-out sessions. We
12 would have sessions together as an entire company,
13 so these were sales strategy meetings. And then
14 we would break out into our various regions to
15 address our -- our business. So we would talk
16 sales numbers, trends, strategies.

17 And then our evenings typically either
18 were filled with dinners or activities. And then
19 on the day that the incident occurred with Kevin
20 Lilly we were actually given a half day of free
21 activities. So you could choose from golf, spa
22 day or just free day or I believe they had a
23 catamaran cruise or something like that set up.

24 Q. In your previous testimony I think you
25 mentioned Susan Schardt. Was Susan Schardt

1 employed by MiMedx?

2 A. Yes.

3 Q. And what was her position?

4 A. She was an account executive in the wound
5 care division.

6 Q. Okay. And did you all, on your -- the --
7 on the January 30th, 2017 when you all were given
8 a free day, did you all have an activity
9 together?

10 A. We -- yes, we had a spa -- both had -- not
11 at the same time but both had spa treatments at
12 the Ritz-Carlton.

13 Q. Okay. And after that, did you go back to
14 her room?

15 A. Yes.

16 Q. And what were you all going to do?

17 A. Just hang out and catch up. We were close
18 friends.

19 Q. Okay. And did her room have a balcony?

20 A. Yes.

21 Q. And were you in the room at approximately
22 4:30 p.m., according to Exhibit 6?

23 A. Yes.

24 Q. And I think you had 4:30 p.m. Eastern
25 Standard Time?

1 A. Yes.

2 Q. That would be Florida time?

3 A. Correct.

4 Q. Okay. And did you hear some people
5 talking loudly?

6 A. Yes.

7 Q. By the way, does Exhibit 6, was that
8 written closer to the time of the incident?

9 A. Exhibit 6 -- yeah, 6 was written around
10 February 8th, so pretty close.

11 Q. Okay. And does it refresh your
12 recollection about the events of January 30th of
13 2017?

14 A. Yes.

15 Q. Okay. And what did you hear?

16 A. Conversations. I couldn't hear all of
17 them, just -- Kevin Lilly was pretty loud and,
18 like I said, initially when they came into the
19 room he was talking about hiring prostitutes and
20 how they all had girls at these meetings. It was
21 very inappropriate for a leadership team to be
22 discussing.

23 Q. And I want to break down what you heard.
24 So you -- you heard some voices coming -- male
25 voices coming from the next room?

1 A. Yes.

2 Q. And was one of those -- were they loud?

3 A. Yes. Loud enough that it, even with the
4 door closed, the balcony door, you could still
5 hear them. It was loud. And I don't know --
6 could not see them.

7 Q. Could you tell if they were on the
8 balcony?

9 A. No, could not tell.

10 Q. Okay. Could you -- did you recognize the
11 voice of Kevin Lilly?

12 A. Yes, I did.

13 Q. Had you heard Kevin Lilly talk before?

14 A. Yes.

15 Q. Had he made presentations at the MiMedx
16 national team meeting that week?

17 A. Yes.

18 Q. Had you met him before that national team
19 meeting?

20 A. Yes.

21 Q. And what -- what do you recall the first
22 things that you initially heard -- well, let me
23 back up. Scratch that.

24 What other voices did you hear from the
25 next room next to Susan Schardt's room?

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1 A. Area vice president Ricky Palmer; Lane
2 Clark, the regional sales director; Frank Braly,
3 who was a regional sales director; Kevin Lilly.

4 Q. Okay. Did you hear Joe Panther?

5 A. Yes, Joe Panther. And then this -- from
6 reading this, Adam, who was somebody I didn't
7 know.

8 Q. Okay. And what was the -- did Kevin Lilly
9 say things in that conversation that concerned
10 you?

11 A. Yeah, he did initially, just hearing him
12 come in and he was talking about how they hire
13 prostitutes at sales meetings, how they all have
14 girls at these meetings, how he has a big suite so
15 if any of the guys needed to use it, they could
16 use it, meaning if they were bringing girls back,
17 I guess. So immediately it was very
18 inappropriate.

19 Q. Okay. And did you, as a result of hearing
20 these comments, did you or Susan Schardt do
21 anything to record the conversation?

22 A. Yes. I recorded it on my iPhone.

23 Q. Okay. And did Ms. Schardt record the
24 conversation as well on her phone?

25 A. Yes.

1 Q. And how did you go about recording it?

2 A. On Voice Memo, which is a utility under
3 the iPhone. So you just record -- press record.
4 And it was actually -- I had the phone sitting
5 halfway in the room and halfway in the balcony.

6 Q. Okay. Did you hear Kevin Lilly make any
7 comments about specific female employees of
8 MiMedx?

9 A. Yes. Specifically, from what I -- the
10 biggest one that I recall is his comments he made
11 about Robyn Scott. And he actually brought it up
12 as saying, he said, Ding dong, the witch is dead,
13 referring to Robyn Scott and meaning that she was
14 no longer with the company. And he said, I had
15 everything to do with that, her not being with the
16 company anymore. And then he went on to say,
17 She's the kind of woman that could fuck up a wet
18 dream.

19 Q. From those comments did you think that
20 Kevin Lilly was responsible for Robyn Scott no
21 longer being with the company?

22 A. Yes, he said that.

23 Q. And from those comments did you think that
24 Robyn Scott being a female was a factor in Kevin
25 Lilly not wanting her to be with the company?

1 A. Yes.

2 Q. What was your reaction when you heard
3 those comments?

4 A. I actually broke down crying at the time
5 because I thought it was awful that he would say
6 that about another human being and, you know,
7 that's somebody's career. So it was actually
8 pretty emotional for me.

9 Q. In the interactions you saw Robyn Scott
10 engage in in the company, did she -- was she
11 professional?

12 A. Very professional.

13 Q. Did you think it was appropriate to
14 describe her as a witch?

15 A. Nope.

16 Q. Did you write anything down when you were
17 listening to the conversation?

18 A. I did. I wrote down on a blue sheet of
19 paper, which I have here --

20 Q. And that's part of Exhibit 2?

21 A. Correct.

22 Q. And what did you write down on the blue
23 sheet of paper?

24 A. I wrote down, "One person who could fuck
25 up a wet dream, RSD, Robyn Scott."

1 Q. Can you hold that up for the video.

2 A. Yes.

3 (Witness complying.)

4 Q. And is that your handwriting on the blue
5 piece of paper that is a part of Exhibit 2?

6 A. Yes.

7 Q. And can you read specifically what you
8 wrote down.

9 A. Yes. "One person who could fuck up a wet
10 dream, RSD, Robyn Scott."

11 Q. Did you hear Kevin Lilly make any comments
12 about any other female employees with the
13 company?

14 A. He -- I believe he made a comment about a
15 sales -- or an account executive, sales rep,
16 Catherine -- and I can't remember her last name
17 right now.

18 Q. Is it Catherine Sullivan?

19 A. Catherine Sullivan, correct. And I'm
20 just -- I'm reading that from my summary of the
21 incident.

22 Q. Did Kevin Lilly make comments about
23 Catherine Sullivan and how she gets business?

24 A. Yes.

25 Q. And do you recall specifically what he

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1 said about Catherine Sullivan?

2 A. I don't recall exactly.

3 Q. Okay. Do you have a general recollection
4 about the types of comments?

5 A. Yes, that she used her femininity, and I
6 believe he actually said her tits to get
7 business.

8 Q. Okay. Did you regard that as a sexist
9 comment?

10 A. Yes.

11 Q. Then actually after your note about
12 Catherine Sullivan in Exhibit 6, did he also make
13 a comment -- I think you wrote down, "I would like
14 to go on record about number two."

15 Do you know what that was referring to?

16 A. That was referring to the comment that
17 Kevin Lilly made about Robyn Scott about a person
18 that could fuck up a wet dream.

19 Q. Okay. All right.

20 A. So to me that was him -- I mean, obviously
21 talking about his erection, and I just thought
22 that was very sexually inappropriate.

23 Q. Okay. And we may listen to a part of the
24 recording in a bit, but did the -- did the
25 recording you had of Kevin Lilly's conversation

1 national team meeting that you overheard on
2 January 30th, 2017 about Robyn Scott a
3 conversation, comment, slur, joke or gesture of a
4 sexual nature which unreasonably interfered with
5 an employee's work performance or unreasonably
6 created an intimidating, hostile or offensive
7 working environment?

8 A. Yes.

9 Q. Was the fact that Kevin Lilly was making
10 sexist comments about female employees of MiMedx
11 so loudly that other employees, including female
12 employees, could hear it, did that cause you
13 concern as a female employee of the company?

14 A. Yes.

15 Q. Did it cause you concern that your new --
16 that Kevin Lilly in his position -- in his new
17 position was now over the chain of command that
18 you answered to cause you concern as a female
19 employee of MiMedx?

20 A. Yes.

21 Q. What was your purpose of sending this
22 email, Exhibit 9?

23 A. Just to document basically what I pulled
24 from our own employee handbook as sexual
25 harassment. I just wanted to put it in

1 number two.

2 Q. BY MR. SMITH: In the email that you --
3 that is Exhibit 6, on the second page you
4 indicate, "I recorded 43 minutes of this
5 conversation."

6 Do you recall that?

7 A. Yes.

8 Q. And it could have been a little bit more
9 or a little bit less, but it was in the 43-minute
10 range?

11 A. Yes.

12 Q. And the recording of the Kevin Lilly
13 incident that you made on January 30th, 2017 was
14 around 43 minutes?

15 A. Yes.

16 Q. And you sent me a copy of that; correct?

17 A. Yes.

18 Q. After I submitted the subpoena to you;
19 correct?

20 A. Correct.

21 Q. And I'm going to play almost the last 9
22 minutes of it and then I'm going to ask you if you
23 can identify Kevin Lilly's voice on that
24 recording. Okay?

25 A. Okay.

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1 (WHEREUPON, the audio recording was
2 played.)

3 (Audio recording paused.)

4 Q. BY MR. SMITH: Is that Kevin Lilly's
5 voice?

6 A. Yes.

7 (Audio recording resumed.)

8 (Audio recording paused.)

9 Q. BY MR. SMITH: Now, on the recording there
10 was a male voice that said, Ding dong, the witch
11 is dead.

12 Did you hear that?

13 A. Yes.

14 Q. And whose voice is that?

15 A. Kevin Lilly.

16 (Audio recording resumed.)

17 (Audio recording paused.)

18 Q. BY MR. SMITH: Did you hear a male voice
19 say, "The most hated woman in the company"?

20 A. Yes. Kevin Lilly.

21 Q. Was that voice Kevin Lilly?

22 A. Yes.

23 Q. Who was he referring to?

24 A. Robyn Scott.

25 (Audio recording resumed.)

1 (Audio recording paused.)

2 Q. BY MR. SMITH: Did he just -- did the male
3 voice just refer to Pete?

4 A. I'm not sure who he was -- if he was
5 talking about being in Carlton's office or Joe or
6 Pete. I'm not sure.

7 (Audio recording resumed.)

8 (Audio recording paused.)

9 Q. BY MR. SMITH: Did Kevin Lilly just say,
10 "Pete looks over..."?

11 A. Yes, correct.

12 (Audio recording resumed.)

13 (Audio recording paused.)

14 Q. BY MR. SMITH: I'm going to pause the
15 recording.

16 Does -- in the recording does Kevin Lilly
17 indicate -- does he state that he told Pete that
18 Robyn Scott is the one person he doesn't like in
19 the company?

20 A. Yeah, I believe he said he hates her.

21 (Audio recording resumed.)

22 (Audio recording paused.)

23 Q. BY MR. SMITH: Did Kevin Lilly on this
24 recording just state, "We could fire her ass or we
25 could RIF her or whatever"?

1 A. Yes.

2 (Audio recording paused.)

3 Q. BY MR. SMITH: Have we just listened to
4 over -- a little over eight minutes of the
5 recording you made on January 30th, 2017 of Kevin
6 Lilly and the other employees at the national team
7 meeting?

8 MR. JONES: At this point I just want to
9 interject because now we've heard the -- whatever
10 it was, seven or eight minutes of recording, and I
11 want to enter our stipulation and my objections.

12 MR. SMITH: Okay.

13 MR. JONES: And my reservations.

14 So obviously we haven't been able to
15 authenticate any of this, not that we ever will,
16 but if we chose to get an expert to see if there
17 were any breaks or changes or muffling or who all
18 the people are that are heard on here giggling or
19 making interjections, we haven't done that. And
20 that would also possibly bear on the authenticity.

21 But for what it's worth, the witness has
22 said it's her tape, she's given it to you and it's
23 played so we don't have any objection on that
24 score. You're just trying to interrogate her on
25 the issues.

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1 we're not going to, you know, try to stop that.

2 MR. SMITH: Right. And you're not waiving
3 any objection you might have to whether it was
4 legally recorded or to have it examined by someone
5 forensically?

6 MR. JONES: Agreed.

7 Q. BY MR. SMITH: All right. At the end of
8 the recording that we listened to during your
9 deposition, does the voice of Kevin Lilly state,
10 when talking about Robyn Scott, that she could
11 fuck up a wet dream?

12 A. Yes.

13 (Deposition Exhibit No. 10 was marked for
14 identification.)

15 Q. BY MR. SMITH: I'm going to show you
16 what's marked as Exhibit 10, which is an email --
17 appears to be an email you sent to Tim O'Brien on
18 February 6, 2017.

19 Do you recall sending that email?

20 A. Yes.

21 Q. Was this around the time -- was this
22 shortly after when you discussed the Kevin Lilly
23 incident with Tim O'Brien?

24 A. Yes.

25 Q. And you wrote, "Tim, I've had it. We are

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1 Q. And then on March 2nd you received the
2 letter telling you that they had concluded the
3 investigation that we previously looked at?

4 A. Correct.

5 Q. And then shortly after that you
6 resigned?

7 A. Yes, I resigned. I believe it was March
8 3rd.

9 Q. Okay. And tell the ladies and gentlemen
10 of the jury why you resigned.

11 A. I resigned due to MiMedx's poor handling
12 of the resolution of the incident that I reported.
13 I did not feel comfortable reporting to Kevin
14 Lilly at that time and felt that my balance with
15 work and family, that I would need to take -- or
16 to no longer be with this company.

17 Q. Did you hear Kevin Lilly make sexist
18 comments about Robyn Scott on January 30th,
19 2017?

20 A. Yes.

21 Q. Did you hear Kevin Lilly say he had every
22 part in having Robyn Scott terminated from the
23 company?

24 A. Yes.

25 Q. Did you hear Kevin Lilly say that he

1 discussed with Pete Petit, Joe Longo and others
2 that they could terminate Robyn Scott or they
3 could subject her to a reduction in force?

4 A. Correct.

5 Q. And is it your understanding that Robyn
6 was subjected to a reduction in force?

7 A. Yes.

8 Q. From the context of the conversation you
9 overheard on January 30th, 2017, did -- was Kevin
10 Lilly indicating that they were trying to make it
11 look like she was being subjected to a reduction
12 in force in a real attempt to get rid of her?

13 A. Yes.

14 Q. Switching gears a little bit.

15 Did you see tissue mistagged at MiMedx?

16 A. Yes.

17 Q. What is mistagging of tissue, for the
18 benefit of the ladies and gentlemen of the jury?

19 A. Tagging of tissue within the organization
20 was for reporting of commissions, so basically
21 ownership of who sold the tissue, meaning sales
22 were -- direct sales rep with the company or
23 distributor with the company tagging those tissues
24 to procedures as well. So making -- because it is
25 an allograft, it is a human tissue, it would need

Page 76

1 STATE OF ARIZONA)

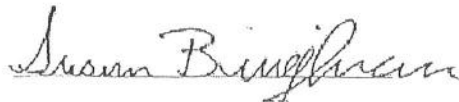
) ss

2 COUNTY OF MARICOPA)

3
4
5 BE IT KNOWN that the foregoing deposition
6 was taken by me, SUSAN D. BINGHAM, CR No. 50364, a
7 Certified Reporter for the State of Arizona; that
8 prior to being examined, the witness named was
9 duly sworn to testify to the whole truth; that the
10 questions propounded and the answers of the
11 witness thereto were taken down by me and
12 thereafter reduced to computerized transcription
13 under my direction and supervision; that the
14 foregoing is a true and correct transcript of all
15 proceedings had upon the taking of said
16 deposition, all done to the best of my skill and
17 ability.

18 I further certify that I am in no way
19 related to any party to said action nor in any way
20 interested in the outcome thereof.

21 DATED at Phoenix, Arizona, this 26th day of
22 August, 2019.

23 
24

SUSAN D. BINGHAN, CR No. 50364

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION

4 JENNIFER R. SCOTT,
5 Plaintiff,

CIVIL ACTION

6 vs.
7 MIMEDX GROUP, INC.,
8 Defendant.

FILE NO: 3:18-CV-01815-S

9
10 VIDEOTAPED DEPOSITION OF KEVIN LILLY

11
12 June 19, 2019

9:35 a.m.

13
14
15
16
17 Littler Mendelson, PC
3344 Peachtree Rd, NE
Suite 1500
18 Atlanta GA 30326

19
20
21
22
23 HEIDI L. KOSARICK, CCR-B-1139

24
25
Page 1

1 the witness.

2 KEVIN LILLY,

3 Having been first duly sworn to state the truth, was
4 examined and testified as follows:

5 EXAMINATION

6 BY MR. SMITH:

7 Q. Could you state your name for the Court and
8 jury, sir?

9 A. It's Kevin Lilly.

10 Q. And who's your employer?

11 A. I'm employed by MiMedx.

12 Q. And how long have you been employed by
13 MiMedx?

14 A. Coming up on four years.

15 Q. And what's your current position?

16 A. Currently, I'm the senior vice-president of
17 sales.

18 Q. Have you ever had your deposition taken
19 before?

20 A. Yes, I have.

21 Q. How many times?

22 A. One time.

23 Q. When was that?

24 A. I think it was last fall. Sometime around
25 then.

Page 5

1 interact with him after you left Matria but before
2 you came to -- to MiMedx?

3 A. No.

4 Q. Okay. What was your -- I believe you said
5 your position right now is senior vice-president of
6 sales?

7 A. Yes.

8 Q. What was your position in 2016?

9 A. So in I believe it was January of 2016, I
10 believe it was national vice-president sales for
11 wound care.

12 Q. Okay. And did -- when did that next change
13 and what was the position?

14 A. I don't recall the date. But sometime, I
15 believe, about a year later. It might have been like
16 end of January of 2017.

17 Q. Okay. And what was your new position at
18 that time?

19 A. I don't recall if it was -- I don't recall.
20 I think it was just vice-president of sales.

21 Q. And then did your title change after that?

22 A. Yeah. I don't recall when. At some point
23 in time it became senior vice-president of sales.

24 Q. Okay. Do you -- do you have an idea of how
25 long you've been -- had that title?

Page 13

1 Q. Well, I'm -- I'm going to ask you that.

2 A. Okay.

3 MR. JONES: What is the actual question
4 pending, has he seen it?

5 MR. SMITH: No. My -- my question was, was
6 he ever in -- in a hotel room with Kevin -- with
7 him, Ricky Palmer, Joe Panther, Lane Clark and
8 Frank Braly.

9 MR. JONES: Gotcha.

10 THE WITNESS: Okay. So your question was?

11 BY MR. SMITH:

12 Q. Well, do you recall being in a hotel room
13 with Ricky Palmer, Joe Panther, Lane Clark and Frank
14 Braly on January 30, 2017 at the Ritz Carlton during
15 a sales meeting?

16 A. I do.

17 Q. And you've had a chance to read Exhibit 4,
18 correct?

19 A. Yes.

20 Q. All right. And Amy Powers was an employee
21 of MiMedx, correct?

22 A. Yes.

23 Q. Have you met Amy Powers?

24 A. I have.

25 Q. And Susan Schardt was an employee for

Page 54

1 MiMedx?

2 A. Yes.

3 Q. And you've met with Susan Schardt?

4 A. Yes.

5 Q. Was she in wound care or SSO?

6 A. I believe Susan was in wound care.

7 Q. And was Amy Powers in wound care or SSO?

8 A. I believe she was in SSO.

9 Q. Okay. Robyn Scott, Amy Powers and Susan
10 Schardt are all females, correct?

11 A. Correct.

12 Q. And you're a male, correct?

13 A. Correct.

14 Q. Now, did you ever state 500 bucks is the
15 going rate for a hooker during that occasion?

16 A. No.

17 Q. Did anyone in your presence state that or
18 something like that?

19 A. Not that I recall.

20 Q. And then did -- do you recall anyone in your
21 group, this group of Mr. Palmer, Panther, Clark and
22 Braly and yourself, saying, We all have a girl at the
23 meeting?

24 A. No.

25 Q. Okay. Did you state, If there's one person

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1 who can fuck up a wet dream it's her, about Robyn
2 Scott, on that occasion?

3 A. I don't remember.

4 Q. Do you think you could have said it but you
5 just don't recall?

6 A. I don't recall.

7 Q. Okay. Did you ever state, "Bro, thank God,
8 ding dong the wicked witch is dead"? I had every
9 part in that. And just so you know, I was sitting
10 around, it was Carlton and Longo were in the room
11 with Nick and I. So I was in a meeting. We were
12 doing all this transitioning shit and I'm sitting
13 here going for me the number one hated woman in this
14 company is her.

15 Did you say that on that occasion?

16 A. I don't remember saying that.

17 Q. You could have, you just don't recall?

18 A. I don't recall.

19 Q. Okay. Did you ever say, So I'm sitting in
20 another meeting where I told Pete, there's one thing
21 that really bothered me about Robyn at the 2016 NSM
22 and a lunch I had with her and several others at the
23 table. I started this conversation with her and how
24 I tried to bring everyone together. She said, Hey,
25 wait a minute, let me tell you about me. Kevin then

Page 56

1 said, I took this to Pete. And Pete said, Kevin, let
2 me stop you. Kevin said, And I was trying the best
3 way to throw her under the bus.

4 Did you say anything like that on that
5 occasion?

6 A. I don't recall.

7 Q. Who is Catherine Sullivan?

8 A. Catherine is a -- currently?

9 Q. Yes.

10 A. Catherine is a regional sales director in
11 Houston.

12 Q. Do you supervise her?

13 A. She's in my reporting chain of command.

14 Q. In 2016 did you supervise Catherine
15 Sullivan?

16 A. Catherine was under my chain of command as
17 a, I believe she was an AE on the wound care side.

18 Q. In 2016 and 2017 Catherine Sullivan was an
19 employee of the company?

20 A. Yes.

21 Q. Do you recall anyone on -- well, do you
22 recall being in the hotel room with those individuals
23 on January 30, 2017?

24 A. Yes.

25 Q. Okay. During that occasion in the hotel

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1 become aware that Amy Powers had made a sex
2 discrimination or sexual harassment complaint about
3 you?

4 A. No. The only time I became aware that Amy
5 Powers had said anything about me was during my
6 deposition with Mike Fox.

7 Q. Okay. And -- and what did you become aware
8 of then?

9 A. I think he asked me a question about, you
10 know, Was there a conversation with those people in
11 the room?

12 Q. Okay. And -- and what did you indicate on
13 that occasion?

14 A. That I did not remember those comments.

15 Q. Okay. And then did anyone tell you
16 that -- when -- when did you become aware that Susan
17 Schardt had made a sex discrimination or sexual
18 harassment complaint about you?

19 A. Just now when you told me.

20 Q. Okay. And did anyone ever indicate to you
21 that there was a recording of you? Other than the
22 attorneys for MiMedx.

23 A. No.

24 Q. Okay. No one at MiMedx indicated to you, We
25 have a recording of you?

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1 disciplinary in the letter or not.

2 Q. Okay. Well, regardless of what it said,
3 when you received it, did Thornton Kuntz indicate to
4 you that you were being disciplined?

5 A. I don't recall.

6 Q. And then did, prior to receiving that
7 document, did -- were you ever told, We're -- We're
8 looking into some allegations against you, we need to
9 ask you some questions?

10 A. Yes.

11 Q. And who indicated that to you?

12 A. It was in a meeting with Chris Cashman and
13 Thornton Kuntz.

14 Q. Okay. And about when did that meeting take
15 place?

16 A. It's probably, I'm guessing, like roughly a
17 week after our national sales meeting.

18 Q. Okay. And who -- where did the meeting take
19 place?

20 A. They -- we met in Chris Cashman's office.

21 Q. How long do you recall the meeting lasting?

22 A. I don't recall. Do you want me to
23 speculate?

24 Q. Well, do you think it was longer than
25 15 minutes?

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1 A. No.

2 Q. Okay. So you think -- you -- are you pretty
3 comfortable that that meeting was less than
4 30 minutes?

5 A. Yes.

6 Q. Okay. And what do you recall Chris Cashman
7 saying in that meeting to you?

8 A. I recall he said, There were some
9 allegations made, you know, about you, you know. Do
10 you remember making any statements?

11 Q. Okay. Did he -- did he offer specific
12 statements that had been alleged that you said?

13 A. I don't recall if he did or not.

14 Q. Okay. Did he ask you if you had made any
15 statements about women?

16 A. I believe so.

17 Q. Did he ask you if you had made any
18 statements about Robyn Scott?

19 A. I don't know.

20 Q. Okay. You don't recall?

21 A. I don't recall.

22 Q. All right. Did Thornton Kuntz say anything
23 at the meeting?

24 A. Yes.

25 Q. Okay. First of all, back to Cashman. What

Page 62

1 referring to Frank Braly? Did you ever refer to
2 Frank Braly as Bra?

3 A. No.

4 Q. Okay. Bra, thank God ding dong the wicked
5 with is dead. I had every part of that. Come here.
6 I had every part of that. And just so you know, I
7 was sitting around, it was Carlton and Longo were in
8 the room with Nick and I. So I was in a meeting. We
9 were doing all this transitioning shit. And I'm
10 sitting here going for me the number one hated woman
11 in this company is her.

12 Do you see where I read that?

13 A. Yes.

14 Q. Did you state that on January 30, 2017?

15 A. I don't remember stating that.

16 Q. Could you have said it?

17 MR. JONES: Objection to the form.

18 THE WITNESS: I don't know.

19 BY MR. SMITH:

20 Q. Did you ever feel that Robyn Scott was the
21 number one hated woman in MiMedx?

22 A. I don't know.

23 Q. Well, I'm asking you did you ever feel that
24 way?

25 A. No.

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1 Q. Did you ever think that?

2 A. No.

3 Q. Okay. Now, are you saying you didn't make
4 this statement that's in quotes, or you just don't
5 recall making it?

6 A. I don't remember.

7 Q. You could have, you just don't remember,
8 correct?

9 MR. JONES: Objection to the form. It's
10 been asked -- it's been asked and answered that
11 he didn't even feel or think that.

12 MR. SMITH: Well, my -- my question is
13 different.

14 MR. JONES: You're asking him if he didn't
15 think that but he said it anyway?

16 MR. SMITH: Well, I'm asking him --

17 BY MR. SMITH:

18 Q. Did you -- did you ever state, Thank God
19 ding dong the wicked witch is dead. I had every part
20 of that. Come here. I had every part of that. And
21 just so you know, I was sitting around, it was
22 Carlton and Longo were in the room with Nick and I.
23 So I was in a meeting. We were doing all this
24 transitioning shit. And I'm sitting here -- sitting
25 here going for me the number one hated woman in the

Page 67

1 company is her, closed quotes. Did you ever say
2 that?

3 A. I don't remember.

4 Q. Okay. Now, Mike Carlton is -- or what was
5 his position as of January 30, 2017?

6 A. It doesn't say.

7 Q. Well, do you -- do you recall what his
8 position was as of January 30, 2017?

9 A. I think he was SVP global sales.

10 Q. Okay. And then was there a Nick that worked
11 for the company in January of -- January 2017,
12 December 2016?

13 A. There were probably many Nicks.

14 Q. Okay. Was there a Nick Andolino?

15 A. Yes.

16 Q. Okay. And then Joe Longo, he worked for the
17 company in December 2016 and January 2017, correct?

18 A. Yes.

19 Q. Okay. Okay. Now, and then further down
20 where the number 2 is, in quotes there's a statement
21 attributed to you about Robyn. If there's one person
22 who could fuck up a wet dream it's her, closed quote.
23 Did you ever make that statement on June 30, 2017?

24 MR. JONES: Objection; asked and answered.

25 THE WITNESS: Not that I recall.

Page 68

1 BY MR. SMITH:

2 Q. Well, do you specifically remember not
3 saying it? Or do you just not remember?

4 A. I don't remember.

5 Q. Okay. All right. Were those statements
6 that we just read in Exhibit 5, that I just read to
7 you, were those the types of statements that Chris
8 Cashman asked you about in the meeting between you,
9 Chris and Thornton Kuntz?

10 A. I don't recall.

11 Q. Did Chris Cashman ever, in the meeting with
12 Thornton Kuntz that you previously testified, ask you
13 if you had ever said ding dong the witch is dead?

14 A. I don't recall.

15 Q. Did Chris Cashman ever ask you if you had
16 made a statement that you had every part of being
17 involved in Robyn Scott's separation from the
18 company?

19 A. I don't recall.

20 Q. Did Chris Cashman ask you if you said Robyn
21 Scott was the number one hated woman in the company?

22 A. I don't recall.

23 Q. Did you ever talk to Pete Petit about Robyn
24 Scott?

25 A. I don't remember.

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1 And I think I said yes.

2 Q. Okay. Now, we have come -- it further goes
3 on, We advised you that we would be conducting
4 confidential investigative conversations with all of
5 the individuals that were alleged to have been in the
6 room during the overheard conversations.

7 We have completed that investigation and
8 have discussed the accusations with Ricky Palmer,
9 Lane Clark, Frank Braly, Joe Panther and Adam Domecq.
10 In our discussions with those individuals, the
11 alleged comments that you advised us were not said
12 during the conversations of January 30th could not be
13 confirmed as spoken by you or someone else. In those
14 discussions, the certain comments that you
15 acknowledge saying were confirmed as being said by
16 you.

17 Okay. Did anyone else in the hotel room on
18 January 30, 2017, when you were hosting these fellow
19 male employees, did anyone else make any comment
20 about Robyn Scott that you remember?

21 A. I don't remember.

22 Q. Okay. Did anyone else make a comment about
23 Robyn being the -- the most hated person in the
24 company?

25 A. I don't remember.

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1 Q. Did anyone else state that Robyn Scott could
2 fuck up a wet dream, or words to that effect?

3 A. I don't remember.

4 Q. Would you agree that an employee of MiMedx
5 who makes comments like that would violate MiMedx's
6 sexual harassment and sex discrimination policy?

7 A. I don't know.

8 Q. Okay. Do you think a male employee that
9 says that a female employee could fuck up a wet
10 dream, do you think a male employee of MiMedx that
11 makes that statement, violates the company's policy
12 against sex discrimination and/or sexual harassment?

13 A. I don't know.

14 Q. Okay. Do you think if a male employee of
15 MiMedx says that a female employee gets business
16 because of her chest, that that would violate
17 MiMedx's policy against sex discrimination and/or
18 sexual harassment?

19 A. I don't know.

20 Q. Now, going down two paragraphs to the
21 paragraph that starts, Please be advised, do you see
22 that?

23 A. I do.

24 Q. Please be advised that although the comments
25 we confirmed you made regarding Robyn Scott were not

Page 75

C E R T I F I C A T E

I, HEIDI KOSARICK, CCR No. B-1139, Certified
Shorthand Reporter, certify:

That the foregoing proceedings were taken
before me at the time and place therein set
forth, at which time the witness was put under
oath by me;

That the testimony of the witness, the
questions propounded, and the objections and
statements made at the time of the examination
were recorded stenographically by me and were
thereafter transcribed;.

That the foregoing is a true and correct
transcript of my shorthand notes taken.

I further certify that I am not a relative
or employee of any attorney or the parties, nor
financially interested in the action.

I declare under penalty of perjury under the
laws of Georgia that the foregoing is true and
correct.

Dated this 2nd day of July, 2019.

Heidi L. Kosarick

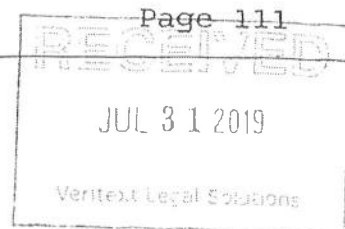
HEIDI L. KOSARICK, CCR-B-1139

Page 110

Job No. 3398998

1 ERRATA for ASSIGNMENT 3398998
 2 I, the undersigned, do hereby certify that I have
 3 read the transcript of my testimony, and that
 4 _____ There are no changes noted.
 5 X The following changes are noted:
 6
 7 Pursuant to Rule 30(7)(e) of the Federal Rules of
 8 Civil Procedure and/or O.C.G.A. 9-11-30(e), any
 9 changes in form or substance which you desire to make
 10 to your deposition testimony shall be entered upon
 11 the deposition with a statement of the reasons given
 12 for making them. To assist you in making any such
 13 corrections, please use the form below. If
 14 additional pages are necessary, please furnish same
 15 and attach.
 16
 17 Page 10 Line 25 Change Spectris should be SpectRx
 18 _____
 19 Reason for change correction
 20 Page 94 Line 25 Change AK should be 8k
 21 _____
 22 Reason for change correction
 23 Page Line Change
 24 _____
 25 Reason for change
 26 Page Line Change
 27 _____

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1 Reason for change _____

2 Page_____ Line_____ Change _____

3 _____

4 Reason for change _____

5 Page_____ Line_____ Change _____

6 _____

7 Reason for change _____

8 Page_____ Line_____ Change _____

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10 Reason for change _____

11 Page_____ Line_____ Change _____

12 _____

13 Reason for change _____

14 Page_____ Line_____ Change _____

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16 Reason for change _____

17 _____

18 _____

19 _____



KEVIN LILLY

20 _____

21 Sworn to and subscribed before me this

_____ 31 day of July, 2019.

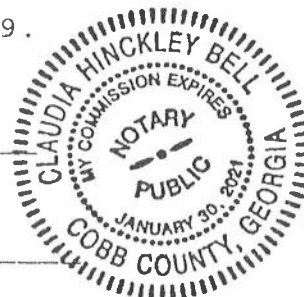
22 _____

23 _____

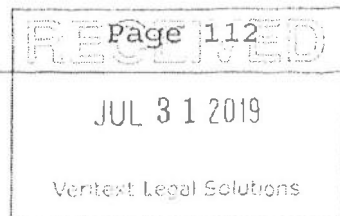
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24 My commission expires: _____ 01/30/2021

25 _____



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January 30, 2017

THE RITZ-CARLTON

Dear Guest,

ORLANDO, GRANDE LAKES

We hope you are enjoying your visit with us!

Please accept our sincerest apologies for the inconvenience you may have experienced early this morning when one of our main pool pumps malfunctioned promptly activating our alert system. At this time, we have addressed this issue and do not anticipate any further disturbances.

Thank you for your patience and understanding. Should you have any questions or need further assistance, please contact any of our Ladies and Gentlemen at our Front Reception by dialing "0" from your guestroom and they will be delighted to assist.

Warmest regards,

Jenny Piccione
Hotel Manager

One person who could
fulfill up a wife dream

- RSD - Robyn Scott

**AMY POWERS AUDIO RECORDING OF KEVIN LILLY
AND OTHERS ON JANUARY 30, 2017
AT THE RITZ CARLTON HOTEL
SUBMITTED BY MANUAL FILING**

